UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

FRANCES S. O'BRIEN, Plaintiff,	:	
v.	:	C.A. No. 02-357 T
JOHN E. POTTER,[1] POSTMASTER GENERAL UNITED STATES POSTAL SERVICE, and STEVE SONDLER, Alias (Individually and as a Supervisor of the United States Postal Service), and ROBERT MCCALL, Alias (Individually and as a Supervisor of the United States Postal Service), Defendants.	:	

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

This is an employment discrimination action brought by Francis S. O'Brien ("Plaintiff") against her employer, the United States Postal Service ("USPS"), and two individuals who each served in a supervisory capacity over Plaintiff, Steve Sondler ("Sondler") and Robert McCall ("McCall"). Before the court is Defendants' Motion for Partial Dismissal and Motion to Strike Pursuant to Rule 12(f) ("Motion for Partial Dismissal"). Plaintiff has objected to the Motion for Partial

[1] The caption of Plaintiff's Complaint and Demand for Jury Trial ("Complaint") names "Jack" Potter as the Postmaster General of the United States Postal Service. However, as noted in Defendants' Motion for Partial Dismissal and Motion to Strike Pursuant to Rule 12(f) ("Motion for Partial Dismissal"), that individual is properly identified as John E. Potter ("Potter").

Dismissal, and it has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and D.R.I. Local R. 32(a). A hearing was conducted on February 24, 2003. After considering the parties' oral arguments, reviewing the memoranda submitted, and performing independent research, I recommend that the Motion for Partial Dismissal be granted.

Background[2]

Plaintiff commenced working for the United States Postal Service in September 1986. See Complaint and Demand for Jury Trial ("Complaint") ¶ 10. In November 1993, she was attacked by two dogs while delivering mail, which attack left her with unspecified "residual problems." Id. ¶ 11. In or about October 1995, a doctor imposed certain permanent working restrictions on Plaintiff. See id. ¶ 10. She was told not to lift over twenty pounds, not to push more than fifty pounds on wheels, and to limit her bending and walking. See id. In May 1996, Plaintiff requested and received a transfer to a position in the Express Mail Department and was told that the transfer was permanent. See id. ¶ 11. In June 1997, she was told that the Express Mail Department was being dissolved and was requested to undergo a Fitness for Duty examination to assess her suitability for a collection route which involved heavy lifting. See id. ¶ 15. The examination revealed that Plaintiff "would not tolerate well" a collection position. Id. ¶ 16. The Express Mail Department was never dissolved.

[2] The facts are presented summarily since they are largely irrelevant to the purely legal issues before the court. For purposes of the present motion, the court accepts as true the facts as alleged by Plaintiff in her Complaint and draws all reasonable inferences from those facts in Plaintiff's favor. See Gorski v. N.H. Dep't of Corr., 290 F.3d 466, 473 (1st Cir. 2002).

See id. ¶ 17.

In June 1998, Sondler requested that Plaintiff reduce her hours and Plaintiff declined to do so. See Complaint ¶¶ 18-20. In September 1998, Sondler ordered Plaintiff to undergo a second Fitness for Duty examination, purportedly to update yearly records. See id. ¶¶ 21-22. That examination revealed no significant improvement from the prior one. See id. ¶ 24. Plaintiff's working restrictions remained unchanged. See id. In or around October 1998, Plaintiff received a letter which stated that the examination had found that her work restrictions were permanent and which gave her the option of requesting an alternative work assignment or applying for disability retirement. See id. ¶¶ 26-28. McCall advised Plaintiff to write a letter requesting an Express Mail position. See id. ¶ 29. Plaintiff did so, but when McCall read the letter he instructed Plaintiff to omit any mention of the 1993 dog attack. See id. ¶ 30. In the end, McCall redrafted the letter and had Plaintiff sign it. See id.

In November 1998, Plaintiff and a union representative met with Sondler and McCall. See Complaint ¶ 31. At the meeting, Plaintiff was given the choice of accepting a position that involved heavy lifting, taking disability retirement, or quitting her position. See id. Thereafter, she "became so overwhelmed with the persistence and determination of the Defendants to be rid of her that she was forced to leave the premises." Id. ¶ 32. Subsequently, Plaintiff was diagnosed with "Acute Stress Disorder," id. ¶ 33, which was linked to her experiences at work, see id. In a December 3, 1998, letter from USPS she was told to decide by December 14, 1998, whether to accept the offered position or disability retirement, or else she would be "separate[d] ...

from the [USPS]." Id. ¶ 34. Apparently, Plaintiff never returned to work and her employment was terminated.

On January 20, 1999, Plaintiff filed a charge of employment discrimination against the USPS, Sondler, and McCall, and on May 30, 2002, she received a final agency decision. See Complaint ¶ 5. On August 9, 2002, Plaintiff filed in this court a five count Complaint, alleging: 1) age discrimination[3] in violation of Title VII of the Civil Rights Act of 1964[4] ("Title VII"), see Complaint ¶¶ 36-41; 2) disability discrimination[5] in violation of Title VII, see id. ¶¶ 42-47; 3) employment discrimination and harassment[6] in violation of the Americans with Disabilities Act of 1990[7] ("ADA"), see id. ¶¶ 48-54; 4) retaliation[8] in violation of

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[3] The Complaint states that Plaintiff was fifty-seven years old when working in the Express Mail Department. See Complaint ¶ 38. Though she does not so specify, presumably this was her age at the time her employment was discontinued. Plaintiff alleges that a younger employee in the department was offered a position that Plaintiff could have performed, while Plaintiff was offered only a position that Defendants knew or should have known she was incapable of performing. See id. ¶ 39.

[4] See 42 U.S.C. §§ 2000e—2000e-17 (2000).

[5] Plaintiff claims that she is disabled, that Defendants knew she could not perform the position offered to her, and that "other nondisabled employees were given an opportunity at a position the Defendants knew [Plaintiff] could perform," Complaint ¶ 45. She also alleges other unspecified harassment and offensive conduct based on her disability. See id. ¶ 46.

[6] See n.5.

[7] See 42 U.S.C. §§ 12101—12213 (2000).

[8] Plaintiff claims she was treated in a demeaning, hostile manner and was terminated because she had filed a "previous EEO claim." Complaint ¶¶ 56-57. The nature and timing of that claim is not specified in the Complaint.

Title VII, see id. ¶¶ 55-58; and 5) retaliation[9] in violation of the ADA, see id. ¶¶ 59-62.

In her prayer for relief Plaintiff requests, based on Defendants' alleged violations of Title VII and the ADA, "damages in an appropriate amount of back-pay, future earnings, with related monetary benefits and interest thereon, plus attorneys fees, costs and interests [sic] ...." Complaint at 11. Plaintiff further seeks compensatory and punitive damages, also based on Defendants' purported violations of Title VII and the ADA. See id.

Law

"[A] complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" Gorski v. N.H. Dep't of Corr., 290 F.3d 466, 473 (1st Cir. 2002)(quoting Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984)). "The factual allegations of the complaint are to be accepted as true, and all reasonable inferences that might be drawn from them are indulged in favor of the pleader." Id.

"The purpose of [Rule 12(b)(6)] is to allow the court to eliminate actions that are fatally flawed in their legal premises and destined to fail, and thus to spare litigants the burdens of unnecessary pretrial and trial activity." Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc., 988 F.2d 1157, 1160 (Fed. Cir. 1993); see also Iacampo v. Hasbro, 929 F. Supp. 562, 567 (D.R.I. 1996)("[A] motion to dismiss invokes a form of legal triage, a paring of viable claims from those

[9] See n.8.

doomed by law."). A complaint is appropriately dismissed as to a particular defendant when the law does not allow the maintenance of a suit against that defendant. See, e.g., Arnold v. Moore, 980 F. Supp. 28, 33 (D.D.C. 1997)(dismissing § 1983 claims against Department of Corrections because "[g]overnmental agencies of the District of Columbia are not suable entities ...."); Spinks v. City of St. Louis Water Div., 176 F.R.D. 572, 573 (E.D. Mo. 1997)(dismissing claim against city's Water Division because it was not suable entity).

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, "[a] court has considerable discretion [to] strik[e] any redundant, immaterial, impertinent or scandalous matter." Alvarado-Morales v. Digital Equip. Corp., 843 F.2d 613, 618 (1st Cir. 1988)(internal quotation marks omitted). Courts have employed Rule 12(f) to strike requests for remedies that are unavailable under the applicable law. See, e.g., Torchetti v. Int'l Bus. Machs. Corp., 986 F. Supp. 49, 55 (D. Mass. 1997) (striking emotional injury and punitive damages claims in ERISA complaint); Spinks, 176 F.R.D. at 574 (striking claims against municipality for punitive damages under Title VII); Allison v. Dugan, 737 F. Supp. 1043, 1049-50 (N.D. Ind. 1990)(striking claims for punitive and compensatory damages under ERISA), aff'd in part and rev'd in part on other grounds, 951 F.2d 828 (7th Cir. 1992).

Issues

Defendants argue that (1) Plaintiff's claims against Sondler and McCall should be dismissed in their entirety because they are not proper defendants in this federal employment discrimination action, and (2) Plaintiff's claim for punitive damages against John E. Potter ("Potter") should

be stricken because such damages are barred.[10] See Defendants' Memorandum in Support of their Motion for Partial Dismissal and Motion to Strike Pursuant to Rule 12(f) ("Defendants' Mem.") at 6-8.

Discussion

I. Construction of Plaintiff's Claims

As an initial matter, Defendants point to several irregularities in Plaintiff's Complaint, specifically in regard to the statutes that Plaintiff cites as authorization for her claims. See Defendants' Mem. at 2 n.2. Accordingly, Defendants have construed Plaintiff's claims as though they were properly pled, and Plaintiff has not taken issue with Defendants' construction. The court agrees with Defendants' interpretation of Plaintiff's claims and, therefore, analyzes the issues before it within the appropriate statutory framework. See Hart v. Mazur, 903 F. Supp. 277, 279 (D.R.I. 1995)(when considering motion to dismiss, court must determine whether complaint states a valid claim for relief under any legal theory).

First, Plaintiff has pled two counts of disability discrimination based, respectively, on Title VII and the ADA.

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[10] Defendants also argue that Plaintiff's claim against Potter for compensatory and punitive damages for age discrimination should be stricken because the Age Discrimination in Employment Act ("ADEA"), under which Plaintiff's claim must be construed, does not provide for the award of either type of damages. See Defendants' Memorandum in Support of their Motion for Partial Dismissal and Motion to Strike Pursuant to Rule 12(f) ("Defendants' Mem.") at 8. Because Plaintiff has conceded that Defendants are correct, see Plaintiff's Memorandum in Support of Objection to Motion for Partial Dismissal and Motion to Strike Pursuant to Rule 12(f) ("Plaintiff's Mem.") at 12, the court need not discuss this claim.

Title VII itself does not contemplate a cause of action for discrimination based on disability, see 42 U.S.C. § 2000e-2(a)(1) (2000)(disallowing discriminatory employment practices based on an "individual's race, color, religion, sex, or national origin ...."), and the ADA is not directed toward the federal government as an employer, see 42 U.S.C. §§ 12111(2) (defining "covered entity" to include employers), 12111(5)(B)(i) (2000) (defining "employer" as excluding the United States); see also Whaley v. United States, 82 F. Supp.2d 1060, 1061 (D. Neb. 2000)("A suit against a federal agency or against an officer of a federal agency in his or her official capacity constitutes a suit against the United States, and is not permitted under the ADA."); Kemer v. Johnson, 900 F. Supp. 677, 681 (S.D.N.Y. 1995)(same), aff'd, 101 F.3d 683 (2d Cir. 1996); D'Antonio v. Runyon, No. CIV. A. 93-3278, 1994 WL 622107, at *5 (E.D. Pa. Nov. 8, 1994)("The Postal Service is a branch of the United States government and so does not fall under the auspices of the ADA.").

Accordingly, Plaintiff's counts II and III are instead construed as alleging a cause of action pursuant to section 501 of the Rehabilitation Act, codified as amended at 29 U.S.C. § 791 (2000), which encourages employment by the federal government of handicapped persons, see 29 U.S.C. § 791(b);[11] Boldini v. Postmaster General U.S. Postal Serv., 928

[11] Section 501(b)

> contains no express nondiscrimination provision. [However,] [i]n 1978, Congress amended the Act to make it clear that a private cause of action exists under § 501(b) and that the remedies, procedures, and rights set forth in the federal employment sections of Title VII of the Civil Rights Act of 1964 apply to complaints of disability discrimination in Federal employment. As for what constitutes a substantive violation of § 501, a 1992 amendment to the Rehabilitation

F. Supp. 125, 129 (D.N.H. 1995); Desroches v. U.S. Postal Serv., 631 F. Supp. 1375, 1378 (D.N.H. 1986). An action under the Rehabilitation Act is the exclusive remedy for discrimination in employment by the Postal Service on the basis of disability. See Boyd v. U.S. Postal Serv., 752 F.2d 410, 413 (9th Cir. 1985); Connolly v. U.S. Postal Serv., 579 F. Supp. 305, 307 (D. Mass. 1984).

Second, Plaintiff has pled one count of age discrimination, again citing Title VII. See Complaint ¶¶ 36-41. Title VII itself also does not prohibit employment discrimination based on age. See 42 U.S.C. § 2000e-2(a)(1) (2000); see also Taylor v. Brown, 928 F. Supp. 568, 573 (D. Md. 1995); Arnett v. Aspin, 846 F. Supp. 1234, 1238 (E.D. Pa. 1994); Fields v. Texas Cent. Educ. Agency, 754 F. Supp. 530, 533 (E.D. Tex. 1989). Consequently, count I of Plaintiff's Complaint is construed as alleging a cause of action pursuant to the Age Discrimination in Employment Act ("ADEA"). See 29 U.S.C. § 633a(a) (2000) (disallowing age discrimination in federal agencies including United States Postal Service); see also Chennareddy v. Bowsher, 935 F.2d 315, 318 (D.C. Cir. 1991)("It is undisputed that the ADEA provides the exclusive remedy for a federal employee who claims age discrimination."); Paterson v. Weinberger, 644 F.2d 521, 525 (5th Cir. 1981)(same); Madden v. Runyon, 899 F. Supp. 217, 225 (E.D. Pa. 1995)(same); Davis v. Devine, 554 F. Supp. 1165, 1170 (W.D. Mich. 1983)(same); Christie v. Marston, 451 F.

> Act incorporates the standards of proof developed under Title I and other employment-related sections of the Americans with Disabilities Act of 1990.

9 Lex K. Larson, Employment Discrimination § 164.01 (2d ed. 1999).

Supp. 1142, 1145-47 (N.D. Ill. 1978)(same).

Third, Plaintiff has pled two counts of retaliation under the ADA and Title VII. See Complaint ¶¶ 55-62. Again, the ADA is not directly applicable to federal government employers. See discussion infra p.7. Furthermore, Title VII's retaliation provision protects employees from being retaliated against for, in short, opposing employment practices made unlawful by Title VII or for filing a charge or participating in proceedings under Title VII. See 42 U.S.C. § 2000e-3(a)(2000); see also E.E.O.C. v. Ohio Edison Co., 7 F.3d 541, 543 (6th Cir. 1993). As explained above, Title VII does not encompass disability or age related discrimination. Accordingly, Plaintiff's Counts IV and V are construed as stating a claim for retaliation pursuant to the Rehabilitation Act. See 29 U.S.C. § 791(g) (2000) (incorporating by reference 42 U.S.C. § 12203(a)).

II. Claims against Sondler and McCall

Defendants Sondler and McCall claim that this action should be dismissed as to them because they are not proper defendants under any of the applicable statutes. See Defendants' Mem. at 6-7. The court agrees.

Regarding Plaintiff's claims for disability discrimination and retaliation, actions to enforce section 501(b) of the Rehabilitation Act are to be brought utilizing the procedural and remedial provisions of Title VII. See 29 U.S.C. § 794a(a)(1) (2000); Lussier v. Runyon, 50 F.3d 1103, 1107 (1st Cir. 1995);
Nunnally v. MacCausland, 996 F.2d 1, 2 (1st Cir. 1993).

> As the language of 29 U.S.C. § 794a(a)(1) indicates, [disabled] federal employees receive the limitations as well as the benefits of 42 U.S.C. § 2000e-16. One such limitation ... specifies that civil actions may

> only be brought against 'the head of the department, agency or unit.' 42 U.S.C. § 2000e-16(c). It is thus well established that a Title VII suit, and therefore a suit brought pursuant to the [Rehabilitation] Act, where the employment involved was with the federal government, can be brought only against the head of the department, agency, or unit against which discrimination is alleged.

Desroches v. U.S. Postal Serv., 631 F. Supp. 1375, 1378 (D.N.H. 1986)(citing Jarrell v. U.S. Post Office, 753 F.2d 1088, 1091 (D.C. Cir. 1985)); see also Brezovski v. U.S. Postal Serv., 905 F.2d 334, 335 (10th Cir. 1990); Soto v. U.S. Postal Serv., 905 F.2d 537, 539 (1st Cir. 1990); Rys v. U.S. Postal Serv., 886 F.2d 443, 444-45 (1st Cir. 1989); Mahoney v. U.S. Postal Serv., 884 F.2d 1194, 1196 (9th Cir. 1989); McGuinness v. U.S. Postal Serv., 744 F.2d 1318, 1322 (7th Cir. 1984); Meyer v. Runyon, 869 F. Supp. 70, 76 (D. Mass. 1994); Hassell v. U.S. Postal Serv., No. 80 C 2566, 1980 WL 365, at *3 (N.D. Ill. Oct. 10, 1980). Accordingly, in the present action Plaintiff may maintain her disability discrimination and retaliation claims under the Rehabilitation Act only against Potter in his official capacity as Postmaster General of the United States, and the claims against Defendants Sondler and McCall must be dismissed. See Desroches, 631 F. Supp. at 1378.

As to Plaintiff's age discrimination claim, although the ADEA does not expressly incorporate the procedures of Title VII, the two statutory schemes "share a common purpose, the elimination of discrimination in the workplace ...." Oscar Mayer & Co. v. Evans, 441 U.S. 750, 756, 99 S.Ct 2066, 2071, 60 L.Ed.2d 609 (1979). Courts have thus consulted Title VII for assistance in interpreting analogous provisions of the ADEA. See, e.g., Lehman v. Nakshian, 453 U.S. 156, 163-64,

101 S.Ct. 2698, 2703-04, 69 L.Ed.2d 548 (1981)(concluding that ADEA § 15, like Title VII § 717, provides federal employees no right to jury trial); Oscar Mayer & Co., 441 U.S. at 756, 99 S.Ct at 2071 (holding that ADEA § 14(b), like Title VII § 706(c), requires claimants to resort to available state administrative remedies before bringing federal civil action); Lavery v. Marsh, 918 F.2d 1022, 1025-26 (1st Cir. 1990)(applying Title VII statute of limitations to ADEA actions); see also Rebar v. Marsh, 959 F.2d 216, 218 n.5 (11th Cir. 1992)(providing extensive listing of cases where Title VII provisions were applied to ADEA claims).

More specifically, numerous courts employing the foregoing rationale have held that in an ADEA action against a federal government employer, the agency or department head is the only proper defendant. See Timms v. Frank, 953 F.2d 281, 281 n.* (7th Cir. 1992); Honeycutt v. Long, 861 F.2d 1346, 1348-49 (5th Cir. 1988); Romain v. Shear, 799 F.2d 1416, 1418 (9th Cir. 1986); Ellis v. U.S. Postal Serv., 784 F.2d 835, 838 (7th Cir. 1986); Tennant v. U.S. Bureau of Prisons, No. CIV. 3:02 CV 00558 (AWT), 2003 WL 1740605, at *2 (D. Conn. Mar. 29, 2003); Keene v. Thompson, 232 F. Supp.2d 574, 581 (M.D.N.C. 2002); Brown v. Henderson, No. Civ. A. 99-1000-CB-L, 2000 WL 362035, at *2 (S.D. Ala. Mar. 16, 2000); Lockhart v. United States, 961 F. Supp. 1260, 1265 (N.D. Ind. 1997); Adams v. E.E.O.C., 932 F. Supp. 660, 664 n.3 (E.D. Pa. 1996); King v. Runyon, No. 95 C 4418, 1996 WL 41243, at *1 n.1 (N.D. Ill. Jan. 30, 1996); Parow v. Runyon, No. CIV. 94-251-SD, 1995 WL 73343, at *2-3 (D.N.H. Feb. 23, 1995); Meyer v. Runyon, 869 F. Supp. 70, 76 (D. Mass. 1994); Roche v. U.S. Postal Serv., CIV. A. No. 86-1514-MC, 1988 WL 141540, at *1 (D. Mass. Dec. 13, 1988); Healy v. U.S. Postal Serv., 677 F. Supp. 1284, 1288-89

(E.D.N.Y. 1987); Gillispie v. Helms, 559 F. Supp. 40, 41-42 (W.D. Mo. 1983).

In light of the overwhelming weight of authority and because Plaintiff cites nothing to the contrary other than dicta from one district court case,[12] this court is compelled to conclude that the only proper defendant in an ADEA action against a federal employer is the head of the department or agency. As such, the present action cannot lie against Defendants Sondler and McCall, and I recommend that the claims against them be dismissed.

III. Claim for Punitive Damages

Defendant Potter argues that Plaintiff's request for punitive damages as to her Rehabilitation Act claims should be stricken because, pursuant to a 1991 amendment to Title VII, such damages are barred in actions against governmental agencies. See Defendant's Mem. at 7-8. The court agrees.

After passage of the Civil Rights Act of 1991, remedies available under Title VII and the Rehabilitation Act came to include compensatory and punitive damages for cases involving intentional discrimination. See 42 U.S.C. § 1981a(a) (2000). However, Congress specifically exempted governments, government agencies, and political subdivisions from claims for punitive damages. See 42 U.S.C. § 1981a(b)(1); see also 9

[12] In Meiri v. Dacon, 607 F. Supp. 22 (S.D.N.Y. 1984), the court, after noting the settled rule that the only proper defendant in a Title VII action against a federal agency is the agency head, observed that "Plaintiff has not alleged any conduct on the part of any of the individual defendants which could possibly justify an exception to this rule ...." Id. at 23. Even if that superfluous statement could be read as authorization for this court to deviate from a widely followed rule, Plaintiff here has not alleged conduct by Sondler and/or McCall egregious enough to warrant consideration of that approach.

Lex K. Larson, Employment Discrimination § 164.07 n.1 (2d ed. 1999)("[P]unitive damages are not available under 42 U.S.C. § 1981a(b)(1) against a government, government agency or political subdivision, thus precluding punitive damage awards in the vast majority of [Rehabilitation Act] § 501 cases.").

The federal courts that have considered the issue are nearly unanimous in holding that the United States Postal Service is a government agency as contemplated by section 1981a(b)(1) and, therefore, may not be subjected to claims for punitive damages in a Title VII or Rehabilitation Act action. See Robinson v. Runyon, 149 F.3d 507, 517 (6th Cir. 1998)(Title VII); Baker v. Runyon, 114 F.3d 668, 670-72 (7th Cir. 1997)(Title VII); Soto v. Runyon, 13 F. Supp.2d 215, 225 n.10 (D.P.R. 1998)(Title VII); Jense v. Runyon, 990 F.Supp. 1320, 1324 (D. Utah 1998)(Title VII); Crumpton v. Runyon, No. Civ. A 97-3814, 1998 WL 125547, at *4 (E.D. Pa. Mar. 19, 1998)(Title VII); Boyajian v. Runyon, No. CIV A3:93 CV 1959(AWT), 1998 WL 229921, at *1 (D. Conn. Apr. 15, 1998) (Rehabilitation Act); Cleveland v. Runyon, 972 F. Supp. 1326, 1330 (D. Nev. 1997)(Title VII); Ausfeldt v. Runyon, 950 F. Supp. 478, 488 (N.D.N.Y. 1997)(Title VII); Tuers v. Runyon, 950 F. Supp. 284, 285 (E.D. Cal. 1996)(Rehabilitation Act); Miller v. Runyon, 932 F. Supp. 276, 277 (M.D. Ala. 1996)(Title VII).[13]

The reasoning of those cases is sound and need not be repeated here. The court concludes that Defendant Potter is exempt from Plaintiff's request for punitive damages as to her

[13] But see Roy v. Runyon, 954 F. Supp. 368, 381-83 (D. Me. 1997)(holding that punitive damages are recoverable from the United States Postal Service)(relying on Baker v. Runyon, 922 F. Supp. 1296 (N.D. Ill. 1996), rev'd, 114 F.3d 668, 670-72 (7th Cir. 1997)).

Rehabilitation Act claims and, accordingly, it should be stricken from the Complaint.

Conclusion

For the foregoing reasons, I recommend that the Motion for Partial Dismissal be granted as to Defendants Sondler and McCall. I further recommend that Plaintiff's claims for punitive damages be stricken and also that her claim for compensatory damages under the ADEA be stricken.

Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986);
Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

David L. Martin
United States Magistrate Judge
April 22, 2003